

1 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
2 OF PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE
3 NO. 90-25, "THE PALM BEACH COUNTY PURCHASING
4 ORDINANCE," EXEMPTING PART-TIME, TEMPORARY
5 RECREATIONAL INSTRUCTORS AND SPORTS OFFICIALS, AND
6 MEDICAL PROFESSIONALS AND HOSPITALITY EXPENSES;
7 EXEMPTING CONSTITUTIONAL OFFICERS; EXEMPTING ALL
8 PURCHASES LESS THAN \$500; RAISING THE MANDATORY BID
9 AMOUNT FROM \$10,000 TO \$25,000; APPROVING ALL
10 AGREEMENTS, PURCHASES AND AWARDS ENTERED INTO AND
11 MADE IN ACCORDANCE WITH THE ORDINANCE; AUTHORIZING
12 THE DIRECTOR OF FACILITIES, PLANNING, DESIGN &
13 CONSTRUCTION TO APPROVE CONSTRUCTION CONTRACTS UP
14 TO \$100,000; AUTHORIZING THE DIRECTOR OF PURCHASING
15 TO EXECUTE CONTRACTS IN EXCESS OF \$100,000 SUBJECT
16 TO BOARD APPROVAL; REQUIRING WRITTEN VERIFICATION
17 FOR EMERGENCY PURCHASES; PROVIDING FOR DIRECT
18 PURCHASES AND CANCELLATION OF BIDS AFTER BID
19 OPENING; PROVIDING FOR FILING OF BID PROTESTS
20 WITHIN FIVE BUSINESS DAYS AFTER POSTING OF
21 TABULATION OR RECOMMENDED AWARD; PROVIDING FOR THE
22 DEBARMENT OF VENDORS FOR FRAUD OR COLLUSION;
23 REQUIRING USING DEPARTMENTS TO PROVIDE FOR
24 INSPECTION OF ALL GOODS OR SERVICES; EMPHASIZING
25 M/WBE RESPONSIBILITIES; PROVIDING FOR REPEAL OF
26 LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY;
27 PROVIDING FOR INCLUSION IN THE CODE OF LAWS;
28 PROVIDING FOR EFFECTIVE DATE.

29 WHEREAS, Palm Beach County wishes to provide for the
30 purchase of the highest quality goods and services at the most
31 reasonable cost while still providing maximum access and equal
32 opportunity to qualified companies and individuals desiring to
33 supply those goods and services to the County; and

34 WHEREAS, Palm Beach County has adopted an optional Home
35 Rule Charter pursuant to Section 1(g) of Article VIII of the
36 Florida State Constitution and Part IV of Chapter 125, Florida
37 Statutes; and

38 WHEREAS, Section 125.85, Florida Statutes, authorizes the
39 delegation of any powers and duties not set forth therein by
40 resolution or ordinance of the Board of County Commissioners; and

41 WHEREAS, Palm Beach County enacted Ordinance 90-25,
42 providing for a central purchasing system governing the
43 procurement of goods and services for the County; and

44 WHEREAS, the efficient and successful solicitation and
45 award of governmental procurements requires specific expertise as
46 well as expediency; and

47 WHEREAS, the Board of County Commissioners desires to amend
48 the current purchasing ordinance 90-25 in order to further
49 facilitate and enhance the efficiency of the County's procurement
50 process.

51 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY

1	COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:	
2	I.	AMENDMENT OF PRIOR ORDINANCE
3		Palm Beach County Ordinance 90-25 is hereby amended as
4		follows.
5	II.	GENERAL PROVISIONS
6	A.	AUTHORITY
7		The provisions of this Ordinance are based upon the
8		authority granted to the Board of County Commissioners and the
9		County Administrator of Palm Beach County, Florida, in Article
10		VIII, Section 1, of the Florida Constitution, Chapter 125, Part
11		IV, Florida Statutes, and the Palm Beach County Charter.
12	B.	SHORT TITLE
13		The provisions of this Ordinance shall be known and cited
14		as the Palm Beach County Purchasing Ordinance.
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16	D. GENERAL PURPOSE	

17 The purpose of this Ordinance is to place the County's
18 purchasing function under a centralized system which will enable
19 the County to:

- 20 1. establish policies governing the purchase of
- 21 goods and services;
- 22 2. provide for fair and equitable treatment for all
- 23 persons who do business with Palm Beach County;
- 24 3. encourage and promote equal opportunity for all
- 25 persons doing business with Palm Beach County;
- 26 4. obtain goods and services of satisfactory quality
- 27 and quantity at reasonable cost for Palm Beach County; and
- 28 5. continue the development of procurement policies
- 29 and procedures through the promulgation of Rules and Regulations
- 30 of Purchasing in accordance with the provisions of this Ordinance.

31 The authority granted hereunder shall not include
32 fundamental policy decisions regarding the County's purchasing
33 functions and procedures. These powers, including the
34 determination of the total funds to be spent pursuant to this
35 Ordinance by the designated departments and the setting aside of
36 those funds, shall remain solely with the Board of County
37 Commissioners and are not and shall not be delegated. Departments
38 may not request procurements beyond the limitations imposed in the
39 County's budgetary process and shall make annual accountings to
40 the Board of County Commissioners of their expenditure of these

1 funds.

2 E. REQUIREMENT OF GOOD FAITH

3 The provisions of this Ordinance require all parties
4 involved in the development, performance, or administration of
5 purchasing contracts of the Board of County Commissioners to act
6 in good faith.

7 F. APPLICATION/EXEMPTIONS

8 The provisions of this Ordinance shall apply to every
9 purchase by the Board of County Commissioners from County funds,
10 including state and federal assistance monies, except as otherwise
11 specified by law. They shall not apply to:

- 12 1. Agreements between the Board of County
13 Commissioners and nonprofit organizations or
14 other governments including the transfer, sale
15 or exchange of goods and/or services.
- 16 2. Procurement of dues and memberships in trade or
17 professional organizations; subscriptions for
18 periodicals; advertisements; postage; expert
19 witnesses; abstracts of titles for real
20 property; title insurance for real property;
21 court reporter services; legal services; water,
22 sewer, and electrical utility services;
23 copyrighted materials; patented materials;
24 licensed computer software; part-time, temporary
25 recreational instructors and sports officials;
26 professional medical services; authorized
27 hospitality expenses; procurements for
28 constitutional officers; and fees and costs of
29 job-related seminars and training.
- 30 3. Constitutional Officers, specifically the Clerk
31 of the Circuit Court, Sheriff, Supervisor of
32 Elections, Property Appraiser, State Attorney,
33 Public Defender and Tax Collector.
- 34 4. Projects which are governed by the provisions of
35 "Consultants' Competitive Negotiations Act",
36 Section 287.055, Florida Statutes.

5. Real property.
6. Goods and/or services by grant, gift or bequest.
7. Goods purchased with petty cash in accordance with established County procedures.
8. Any purchase of value less than \$500.00, provided, however, that the total dollar amount of such purchases shall not be exempted from the M/WBE procurement goals.

G. DEFINITIONS

1. Administrator means the County Administrator.
2. Agreement means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade, or course of performance. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code of Florida, if applicable, otherwise, by the law of contracts.
3. Bid means a formal price offer by vendor to the buyer to furnish specific goods and/or services in response to an Invitation for Bids, Request for Quotation or a multi-step bidding procedure.
4. Board means the Board of County Commissioners of Palm Beach County, Florida.
5. Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
6. Capital Improvement Project means any public improvement which the County undertakes including the construction or reconstruction in whole or in part of any building, road, highway, street improvements, plant, structure, or facility necessary in carrying out the functions of the County government.
7. Change Order means a written document executed to direct a vendor or contractor to make changes or additions to a purchase order or contract.
8. Construction means the process, usually requiring the professional services of an architect and/or engineer, of

1 building, altering, repairing, improving, or demolishing any
2 structure or building, or other improvements of any kind to any
3 real property as determined by the Director of Purchasing.

4 9. Contract means (a) a deliberate verbal or written
5 agreement between two or more competent parties to perform or not
6 perform a specific act or acts (b) any type of agreement
7 regardless of what it is called for the procurement or disposal of
8 supplies, services or construction.

9 10. Contractor means any person having a contract
10 with the Board of County Commissioners.

11 11. County means the Board of County Commissioners or
12 any of its authorized representatives pursuant to ordinance,
13 resolution, or administrative code.

14 12. Debarment means the exclusion for cause of a
15 vendor or contractor from bidding and/or doing business with the
16 County.

17 13. Design-build Firm means a partnership,
18 corporation, or other legal entity which:

19 1. Is certified under Section 489.119, Florida
20 Statutes, to engage in contracting through a
21 certified or registered building contractor as
22 the qualifying agent; and

23 2. Is certified under Section 471.023, Florida
24 Statutes, to practice engineering; certified
25 under Section 481.219, Florida Statutes, to
26 practice or to offer to practice architecture;
27 or certified under Section 481.319, Florida
28 Statutes to practice or to offer to practice
29 landscape architecture.

30 14. Design-build Contract means a single contract
31 with a design-build firm for the design and construction of a
32 public construction project.

33 15. Design-criteria Package means concise,
34 performance-oriented drawings or specifications of the public
35 construction project. The purpose of the design criteria package
36 is to furnish sufficient information so as to permit design-build

1 firms to prepare a bid or a response to an agency's request for
2 proposal, or to permit an agency to enter into a negotiated
3 design-build contract. The design criteria package shall specify
4 such performance-based criteria for the public construction
5 project, including, but not limited to, the legal description of
6 the site, survey information concerning the site, interior space
7 requirements, material quality standards, schematic layouts and
8 conceptual design criteria of the project, cost or budget
9 estimates, design and construction schedules, site development
10 requirements, provisions for utilities, storm water retention and
11 disposal, and parking requirements, as may be applicable to the
12 project.

13 16. Design Criteria Professional means a firm who
14 holds a current certificate of registration under Chapter 481 to
15 practice architecture or landscape architecture or a firm who
16 holds a current certificate as a registered engineer under Chapter
17 471, Florida Statutes, to practice engineering and who is employed
18 by or under contract to the agency for the providing of
19 professional architect services, landscape architecture services,
20 or engineering services in connection with the preparation of the
21 design criteria package.

22 17. Designee means a duly authorized representative
23 of a person holding a superior position.

24 18. Director of Purchasing means the person holding
25 the position as the head of the Purchasing Department of Palm
26 Beach County.

27 19. Emergency Purchase means a procurement made in
28 response to a requirement when the delay incident to complying
29 with all governing rules, regulations, or procedures would be
30 detrimental to the interests, health, safety, or welfare of the
31 County.

32 20. Employee means an individual of a governmental
33 body of the County government under the control of the Board who
34 is drawing a salary or wages from the Board.

35 21. Goods means any tangible personal property other
36 than services or real property.

1 22. Governmental Body means any division, department,
2 separate office, commission, council, board, bureau, committee,
3 institution, legislative body, agency, government corporation,
4 constitutional office, or other establishment or official of the
5 County Government.

6 23. Invitation for Bids means (a) the solicitation
7 document used for competitive sealed bidding for the purchase of
8 goods and/or services (b) all documents, whether attached or
9 incorporated by reference, utilized for soliciting bids.

10 24. Item means a product, material or service.

11 25. Mandatory Bid Amount means the threshold dollar
12 amount established as policy by the Board of County Commissioners
13 at and above which the formal competitive sealed bid process must
14 be used, except as otherwise provided herein. The Mandatory Bid
15 Amount shall be \$25,000.00.

16 26. May denotes the permissive.

17 27. Minority/Women Business Enterprise (M/WBE) means
18 a business concern owned, managed and controlled by a minority
19 person or woman as defined in the County's Minority/Women Business
20 Enterprise Ordinance.

21 28. Person means any business, individual, union,
22 committee, club, or organization, or group of individuals.

23 29. Posting means an act whereby the County places on
24 a bulletin board, in a designated location, a listing which
25 indicates the vendor or vendors that County staff is recommending
26 receive the award of an invitation for bid or request for
27 proposal.

28 30. Professional Services means any narrow discipline
29 wherein a known practitioner has through education and experience
30 developed expert advisory and programming skills as a vocation;
31 any service performed primarily by vocational personnel which
32 requires the analysis or certification of a professional before
33 the services are acceptable to the user of the service; or any
34 other advisory, study, or programming activity where the Director
35 of Purchasing determines that the level of skills and/or
36 creativity of the potential or known practitioner(s) warrant

1 procurement in lieu of competitive bid or quotation process.

2 31. Proposal means an executed formal document
3 submitted to the buyer stating the goods and/or service offered to
4 satisfy the need as requested in the Request for Proposal or
5 Request for Information.

6 32. Purchase/Procurement means buying, purchasing,
7 renting, leasing or otherwise acquiring any goods and/or services
8 for public purposes in accordance with the law, rules, regulations
9 and procedures intended to provide for the economic expenditure of
10 public funds. It includes but is not limited to all functions
11 which pertain to the obtaining of any supplies, materials,
12 equipment and/or services including construction projects and
13 capital improvements as defined herein required by any department
14 or agency of County government regardless of the source of funds
15 or for which payment is made from County funds. For the purposes
16 of this Ordinance, it excludes those items set forth in Section II
17 F.

18 33. Purchase Order means a purchaser's document used
19 to authorize a purchase transaction with a vendor. It should
20 contain provisions for services ordered; applicable terms as to
21 payment, discounts, date of performance and transportation and
22 other factors or conditions relating to the transaction.
23 Acceptance of a purchase order shall constitute a contract.

24 34. Quotation means any oral or written informal
25 offer by a vendor to the buyer to furnish specific goods and/or
26 services at a stated price.

27 35. Request for Information (RFI) means a
28 solicitation of responses which will satisfy a need rather than a
29 firm specification and in which the respondent is given latitude
30 in order to develop a product and/or service which will fulfill
31 the need.

32 36. Request for Proposal (RFP) means a solicitation
33 of responses for a good and/or service for which the scopes of
34 work, specifications or contractual terms and conditions cannot
35 reasonably be closely defined. Evaluation of a proposal is based
36 on prior established criteria which may include but may or may not

1 be totally limited to price.

2 37. Request for Quotation means an informal request
3 either oral or written to solicit prices for specific goods and/or
4 services.

5 38. Responsible Bidder, Offerer, Quoter, or
6 Respondent means an individual or business which has submitted a
7 bid, offer, proposal, quotation or response, which has the
8 capability in all respects to perform fully the contract
9 requirements, and the integrity and reliability which give
10 reasonable assurance of good faith and performance.

11 39. Responsive Bidder, Offerer, Quoter, or Respondent
12 means an individual or business which has submitted a bid, offer,
13 proposal, quotation, or response, which conforms in all material
14 respects to the solicitation, including but not limited to
15 compliance with specified M/WBE requirements.

16 40. Rules and Regulations of Purchasing means those
17 appropriately promulgated directives having general or particular
18 applicability designed to implement or interpret policy, or
19 describing organization, procedure, or practice requirements.

20 41. Services means the furnishing primarily of labor,
21 time, and/or effort by a contractor, wherein the provision of
22 goods or other specific end products other than reports, studies,
23 plans, advisories, contractual documents, or other documents
24 relating to the required performance is incidental or secondary.
25 This term shall not include construction, employment agreements,
26 or collective bargaining agreements.

27 42. Shall denotes the imperative.

28 43. Sole Source means the only existing source of the
29 only item which meets the needs of the using department as
30 determined by a reasonably thorough analysis of the marketplace.

31 44. Specification means the words used in a Request
32 for Bid or quotation to describe the goods and/or service to be
33 purchased or otherwise acquired.

34 45. Using Department means that department within
35 County government which requests and utilizes goods and/or
36 services procured under this Ordinance.

1 46. Vendor means an actual or potential supplier of
2 a good and/or service.

3 47. Vendor List means the compilation by category of
4 goods and/or services of the names and addresses of those
5 appropriate suppliers of goods and/or services who have indicated
6 an interest in doing business with the County.

7 III. ORGANIZATION

8 A. PURCHASING DEPARTMENT

9 Except as provided in Sections III.F herein, the Purchasing
10 Department shall be the agency through which the County will
11 conduct its purchases of all supplies, material, equipment,
12 contractual services and/or combination of goods and services and
13 will manage any inventory necessary to stock the County warehouse.

14 B. DIRECTOR OF PURCHASING

15 Subject to the provisions of this Ordinance and under the
16 direction of the Administrator, the Director of Purchasing shall
17 serve as the principal officer for the purchase and sale of goods
18 and services for County government.

19 C. DUTIES OF DIRECTOR OF PURCHASING

20 The Director of Purchasing shall:

21 1. administer the central purchasing system for the
22 County;

23 2. upon request of any constitutional officer of the
24 County, make available to such officer the services provided for
25 herein subject to the terms of this Ordinance and any rules and
26 regulations of Purchasing;

27 3. maintain a warehouse stock of commonly used items
28 and a catalog system for the use of County departments and
29 agencies;

30 4. maintain a current file of qualified sources of
31 supply for all goods and services purchased by the County;

32 a. Said Vendor File shall be maintained so as
33 to ensure that every qualified business which has requested
34 placement in the file is included and that the widest practicable
35 vendor coverage is provided.

36 b. A vendor's name may be removed from the

1 Vendor File for failing to respond to three consecutive
2 invitations to bid. After such removal, vendor may be considered
3 for reinstatement upon written request of vendor.

4 5. provide for the establishment/promulgation of
5 Rules and Regulations for Purchasing in the County's policies and
6 procedures manual which shall be reviewed and amended from time to
7 time;

8 6. take all necessary action to further the
9 objectives of the County with regard to the promotion and
10 encouragement of Minority and Women Businesses' participation in
11 the procurement process;

12 7. perform other duties as directed by the Board or
13 the Administrator.

14 D. AUTHORITY OF THE DIRECTOR OF PURCHASING

15 Subject to the direction of the Board or the Administrator,
16 all powers, duties, and authorities relating to the procurement of
17 goods and/or services for the Board of County Commissioners,
18 including the authority to sign those agreements and contracts for
19 the purchase of goods and services governed by this Ordinance,
20 provided they are in conformance with the law and all applicable
21 rules and regulations, are vested in the Director of Purchasing
22 unless specifically vested elsewhere by the provisions of this
23 ordinance. In the absence of the Director of Purchasing, a
24 supervisor over the Director of Purchasing, or an individual
25 specifically appointed by the County Administrator, may assume the
26 powers, duties, and authority vested by this section.

27 The authority granted hereunder is specifically limited by
28 the terms of this ordinance and any award must be made in strict
29 compliance herewith. To this end, the Director of Purchasing or
30 other designee shall have no independent discretion in the award
31 process except as specifically granted in this ordinance.

32 E. DELEGATION OF AUTHORITY BY THE DIRECTOR OF PURCHASING
33 TO SUBORDINATE STAFF

34 Purchasing Department employees designated in writing by
35 the Director of Purchasing may execute purchase orders and price
36 agreements on behalf of the County in an amount not to exceed

1 \$100,000 subject to the same limitations specified in Section
2 III.D herein.

3 F. AUTHORITY OF THE DEPARTMENTS OF ENGINEERING, WATER
4 UTILITIES, AND FACILITIES, PLANNING, DESIGN AND CONSTRUCTION FOR
5 CERTAIN PURCHASES

6 The County Engineer, the Director of the Department of
7 Water Utilities, and the Director of Facilities, Planning, Design
8 and Construction shall serve as the principal officers for
9 selection and award of construction contracts including design-
10 build contracts and for all architectural, professional
11 engineering, landscaping architectural or registered land
12 surveying services for their departments respectively. Award of
13 construction contracts in excess of \$100,000 must be approved by
14 the Board of County Commissioners. This authority shall be
15 subject to the provisions of this ordinance and shall be limited
16 to the same powers, duties, and authorities granted to the
17 Director of Purchasing in Section III.D herein.

18 G. BOARD APPROVAL

19 The Board of County Commissioners hereby approves every
20 agreement entered into and every purchase or award made in
21 accordance with this ordinance in an amount not to exceed
22 \$100,000. The Clerk of the Circuit Court as ex officio Clerk and
23 accountant of the Board of County Commissioners and as auditor,
24 recorder, and custodian of all county funds, is authorized to
25 accept and process all such agreements, purchases, or awards made
26 on behalf of the County pursuant to this ordinance as the act and
27 deed of the County.

28 IV. SOURCE SELECTION

29 The procurement of all goods, material, equipment, services
30 and combinations of goods and/or services by or on behalf of the
31 Board of County Commissioners, including those transactions
32 through which the Board of County Commissioners shall receive
33 revenue, in an amount equal to or in excess of the mandatory bid
34 amount of \$25,000 shall be awarded by a competitive bid or
35 proposal process or as specifically provided in Section IV.C
36 herein, unless otherwise provided by state or federal law. The

1 provisions of the County M/WBE Ordinance will apply to all source
2 selections and awards which are subject to the provisions of this
3 ordinance.

4 Nothing in the foregoing shall prohibit the Board from
5 renewing purchase orders or contracts with vendors/contractors
6 originally selected through a competitive selection process or
7 from purchasing goods, material or equipment for inclusion in a
8 capital improvement project whose cost has been incorporated as
9 part of a bid selected in a competitive bidding process provided
10 for herein. Notwithstanding the provisions of Section IV.A 8, the
11 Director of Purchasing may sign purchase orders for the purchase
12 of goods, material or equipment in any dollar amount included in
13 such capital improvement projects.

14 A. COMPETITIVE SEALED BID PROCESS

15 1. Invitation for Bids - An Invitation for Bids
16 shall be issued which shall include the specifications for the
17 purchases sought.

18 2. Public Notice - Public notice of the Invitation
19 for Bids shall be published in a newspaper of general circulation
20 for a reasonable period prior to bid opening and shall be mailed
21 to all parties on the applicable qualified vendor list.

22 3. Bid Submission - Bids must be received no later
23 than the time and date and at the location specified for bid
24 opening in the Invitation for Bid. No Bids shall be accepted
25 after such time and date or at any other location than specified;
26 and bids received later or at any other location than specified
27 shall be returned unopened to the bidder.

28 4. Bid Opening - Bids shall be opened publicly at
29 the time and place specified in the Invitation for Bids. The name
30 of each bidder, the amount of each bid and such other relevant
31 information shall be recorded and such information shall be
32 posted.

33 5. Bid Cancellation or Postponement - The Director
34 of Purchasing may, prior to bid opening, elect to cancel a bid or
35 postpone the date and/or time of bid submission or opening. After
36 bid opening the Director of Purchasing may cancel a bid if no or

1 only one responsive, responsible bid is received, or if the lowest
2 responsive, responsible bid is in excess of the funding limits
3 established by the County for that bid. In the event of discovery
4 after bid opening of a patent irregularity or procedural flaw
5 which is so severe as to render the process invalid, the County
6 Administrator or a designated Assistant County Administrator may
7 cancel the bid.

8 6. Corrections, Additions to and Withdrawal of Bids

9 a. The following shall govern the correction of
10 information submitted in a bid when that information is a
11 determinant of the responsiveness of the bid:

12 (1) Errors in the extension of unit prices
13 stated in a bid or in multiplication, division, addition, or
14 subtraction in a bid may be corrected by the Director of
15 Purchasing prior to award. In such cases, the unit prices shall
16 not be changed.

17 (2) No bidder shall be permitted to correct
18 a bid mistake after bid opening that would cause such bidder to
19 have the low bid, except that any bidder may correct errors in
20 extension of unit prices stated in the bids, or in multiplication,
21 division, addition, or subtraction. In such cases, unit prices
22 bid shall not be changed.

23 (3) Nothing herein is intended to prohibit
24 the acceptance of a voluntary reduction in price from the lowest
25 responsive, responsible bidder after bid opening, provided such
26 reduction is not conditioned on, or does not result in, the
27 modification or deletion of any specifications or conditions
28 contained in the Invitation for Bids or alter the determination of
29 which vendor is to be awarded the bid or portion thereof.

30 b. A bidder who is alleging a judgmental
31 mistake of fact shall not be permitted to withdraw his/her bid
32 after bid opening. If such bidder unilaterally withdraws his/her
33 bid without permission after bid opening, the Director of
34 Purchasing may suspend the vendor from receiving new orders from
35 the County for up to two years, dating from the date of unilateral
36 withdrawal.

1 c. A bidder alleging a nonjudgmental mistake of
2 fact may be permitted to withdraw his/her bid only when it is
3 determined by the Director of Purchasing that there is reasonable
4 proof that such a mistake was made and, if the bid is the low bid,
5 that the intended bid cannot be determined with reasonable
6 certainty. If a bidder unilaterally withdraws his/her bid without
7 permission after bid opening, the Director of Purchasing may
8 suspend the vendor from receiving new orders from the County for
9 up to two years, dating from the date of the unilateral
10 withdrawal.

11 d. Information in a bid, which concerns the
12 responsibility of the bidder, shall not necessarily be considered
13 conclusive at the time of bid opening, except when the Invitation
14 for Bids unequivocally states that the bid shall not be considered
15 responsive unless the particular information is provided in the
16 bid. When such information has not been so declared as a
17 determinant of responsiveness of the bid:

18 (1) The Director of Purchasing may
19 determine that the information submitted concerning the
20 responsibility of the bidder is so administratively inadequate as
21 to warrant a recommendation of rejection of the bid based on the
22 lack of demonstrated bidder responsibility.

23 (2) The Director of Purchasing may, after
24 bid opening, request additional information of the bidder
25 concerning his responsibility to perform; and the bidder may
26 voluntarily, after bid opening, provide additional or corrective
27 information concerning his responsibility as a bidder. The
28 Director of Purchasing shall consider this and all other
29 information gained prior to the time of award or rejection in
30 making his determinations and recommendations concerning bid
31 acceptance and award.

32 e. A bid shall be considered responsive only if
33 it conforms to the requirements of the Invitation for Bids
34 concerning pricing, surety, insurance, specifications of the goods
35 or services requested, and any other matter unequivocally stated
36 in the Invitation for Bids as a determinant of responsiveness;

1 provided, however, that the alternative methods may be considered
2 and awarded unless specifically prohibited. A lack of conformity
3 on these matters which is nonsubstantive in nature may be
4 considered a technicality or irregularity which may be waived by
5 the Director of Purchasing.

6 7. Bid Evaluation

7 a. The County reserves the right to accept or
8 reject any and all bids and to make award to the lowest responsive
9 and responsible bidder whose bid meets the requirements and
10 criteria set forth in the Invitation for Bid and whose award will,
11 in the opinion of the County, be in the best interest of and most
12 advantageous to the County.

13 b. Factors to be considered in determining
14 whether the standard of responsibility has been met shall include
15 whether a prospective contractor/vendor has:

16 (1) available the appropriate financial,
17 material, equipment, facility, and personnel resources and
18 expertise, or the ability to obtain them, necessary to indicate
19 its capability to meet all contractual requirements;

20 (2) a satisfactory record of performance;

21 (3) a satisfactory record of integrity;

22 (4) qualified legally to contract with the
23 County; and

24 (5) supplied all necessary information in
25 connection with the inquiry concerning responsibility including
26 but not limited to any licenses, permits, or organization papers
27 required.

28 The prospective contractor/vendor shall supply
29 information requested by the County concerning the responsibility
30 of such contractor/vendor. If such contractor/vendor fails to
31 supply the requested information, the County shall base the
32 determination of responsibility upon any available information or
33 may find the prospective contractor/vendor nonresponsible if such
34 failure is unreasonable.

35 c. The County may conduct a prequalification
36 process in which the responsibility of potential vendors/

1 contractors is evaluated and may then limit acceptance of bids or
2 responses to those vendors/contractors deemed qualified in such
3 process.

4 8. Bid Award - Award shall be made to the lowest
5 responsible, responsive bidder and shall be effective upon
6 issuance of a purchase order or execution of a contract by the
7 Director of Purchasing except those awards in excess of One
8 Hundred Thousand Dollars (\$100,000) shall be effective upon Board
9 approval. The County may reject any bid prior to such issuance.
10 The notice of intent to award procurements over the mandatory bid
11 amount shall be posted at the location set for bid opening for a
12 period of five (5) business days. In the event only one
13 responsive, responsible bid is received, that bid may be awarded
14 to the sole bidder or rebid or canceled as provided in Section
15 IV.A 5 herein. The Director of Purchasing is authorized and
16 delegated the authority to execute contracts on behalf of the
17 Board of County Commissioners. Contracts executed by the Director
18 of Purchasing in excess of \$100,000 shall not be effective until
19 approved by the Board of County Commissioners.

20 9. Amendments/Changes After Award - The Director of
21 Purchasing may authorize increases to the amount of an award
22 except that increases of more than 10% to awards which have
23 reached or exceeded \$100,000 must be approved by the Board. After
24 Board approval of an increased award amount, the Director of
25 Purchasing may authorize additional increases of up to 10% of the
26 increased award amount. Authority to increase the amount of any
27 award is predicated on the condition that all provisions of the
28 original award, including the level of M/WBE participation, remain
29 intact and unchanged.

30 B. COMPETITIVE PROPOSAL PROCESS

31 When it is determined by the using department and the
32 Director of Purchasing that the use of competitive sealed bidding
33 is impractical due to the technical or specialized nature of the
34 goods and/or services sought, the County may utilize the following
35 competitive processes as an alternative to the Competitive Bid
36 Process:

1 1. Requests for Proposals or Requests for
2 Information which set forth the terms and conditions of the goods
3 and/or services sought including evaluation factors.

4 a. Notice - Adequate notice shall be published
5 in a newspaper of general circulation for a reasonable time prior
6 to the time set for the submission of responses and shall be
7 mailed to all parties on the applicable qualified vendor list.

8 b. Submission - Proposals must be received no
9 later than the original or amended time and date and at the
10 location specified for submission in the Request for Proposal or
11 Request for Information. No proposal shall be accepted after such
12 time or at any other location than specified; any proposal
13 received later or at any other location than specified shall be
14 returned unopened.

15 c. Proposal Cancellation or Postponement - The
16 Director of Purchasing may, prior to a proposal opening, elect to
17 cancel or postpone the date and/or time for proposal opening or
18 submission. After the proposal opening the Director of Purchasing
19 may cancel the proposal if no or only one responsive, responsible
20 proposal is received, or if the lowest responsive, responsible
21 proposal is in excess of the funding limits established by the
22 County for that proposal. In the event of discovery after
23 proposal opening of a patent irregularity or procedural flaw which
24 is so severe as to render the process invalid, the County
25 Administrator or designated Assistant County Administrator may
26 cancel the proposal.

27 2. Proposal Evaluation - Award shall be made to the
28 most responsible, responsive offerer whose proposal is determined
29 to be the most advantageous to the County. Evaluation of offerers
30 and/or proposals may be made in a multi-step selection process as
31 set forth in the Rules and Regulations of Purchasing or in the
32 Request for Proposal or Request for Information and shall be based
33 upon factors of responsibility set forth in Section IV.A.7.b
34 herein and upon factors of responsiveness and quality based upon
35 criteria set forth in the Request for Proposals or Request for
36 Information and any other relevant information obtained through

1 the evaluation process. Such criteria may include but may or may
2 not be limited to price.

3 3. Award - Notice of the intent to award shall be
4 posted at the location set for proposal submission for a period of
5 five business days. The award shall be made in accordance with
6 the provisions of Section IV.A.8. In the event only one
7 responsive, responsible proposal is received, the County may award
8 to the sole bidder or rebid or cancel as provided in Section
9 IV.B.1.C.

10 C. ALTERNATIVE SOURCE SELECTION

11 1. Small Purchases - Any purchase for an amount less
12 than the mandatory bid amount may be made in accordance with those
13 procedures promulgated in the Rules and Regulations of Purchasing;
14 provided, however, no purchase shall be artificially divided so as
15 to constitute a small purchase under this section.

16 2. Sole Source Purchases - The Director of
17 Purchasing may make or authorize the purchase, under the Rules and
18 Regulations of Purchasing, of goods and/or services without
19 competitive bid when the director of the using department has
20 documented in writing that such good and/or service is the only
21 item that meets the need and is available through only one source.

22 3. Emergency Purchases - The Director of Purchasing,
23 upon receipt of written verification of the emergency
24 circumstances by the Director of the using department, may
25 authorize emergency purchases under \$100,000 as defined herein in
26 accordance with the Rules and Regulations for Purchasing.
27 Emergency purchases over \$100,000 shall be approved by the Board.
28 This authority shall not be delegated. Emergency purchases are
29 subject to internal audit review.

30 4. Cooperative Purchases - Notwithstanding any
31 requirements of this Ordinance, the Director of Purchasing may
32 purchase goods and/or services under contract with the federal,
33 state or municipal governments or any other governmental agency or
34 political subdivision providing the vendor extends the same terms
35 and conditions of the contract to the County.

36 5. Direct Purchases - Notwithstanding the provisions

1 of this ordinance, in the event that no bids are received, and the
2 Director of Purchasing documents that no significant alterations
3 in the specifications, qualification, or terms and conditions can
4 be made to encourage competition, the County Administrator or
5 designated assistant county administrator may authorize the
6 Director of Purchasing to make direct purchase of the goods or
7 services from any vendor identified as being able to meet the
8 original bid specifications.

9 6. Professional and Consultant Services

10 a. Estimated Value Equal to or in Excess of
11 Mandatory Bid Amount

12 The procurement of the services of professionals
13 or consultants as defined herein when the estimated fee is equal
14 to or in excess of the mandatory bid amount shall be awarded by
15 competitive selection based upon an evaluation of the required
16 qualifications of the professional or consultant and the scope of
17 work. Evaluation and award will be made in accordance with the
18 applicable sections of this ordinance and may or may not be based
19 in whole or in part upon price. Award of professional and
20 consultant services shall include a contract which specifies the
21 terms and conditions of services as negotiated between the County
22 and vendor.

23 b. Estimated Value Less Than the Mandatory Bid
24 Amount

25 The procurement of the services of professionals
26 or consultants as defined herein when the estimated fee is less
27 than the mandatory bid amount shall be awarded in accordance with
28 procedures promulgated for small purchases set forth in Section
29 IV.C 1.

30 c. Waiver of Requirements for Competitive
31 Selection

32 The Board may waive the requirements for
33 competitive selection and approve professional or consulting
34 services upon recommendation of the Administrator.

35 7. Professional Architectural, Engineering,
36 Landscape Architectural or Land Surveying Services Not

1 Governed by Section 287.055, F.S.

2 a. Services for projects, the basic
3 construction cost for which is estimated to be equal or to exceed
4 the mandatory bid amount but which is not in excess of the
5 threshold amount set in Section 287.055, F.S., shall be awarded by
6 the competitive bid or proposal process set forth in subsections
7 A and B of this Section and Section III.F herein.

8 b. Services for construction projects or for
9 planning or study activities, the basic cost of which is estimated
10 to be less than the mandatory bid amount, shall be awarded in
11 accordance with procedures promulgated for small purchases set
12 forth in Section IV.C.1.

13 c. Estimated Value Less than Mandatory Bid
14 Amount

15 The procurement of the services of professionals
16 or consultants as defined in Section II.G.28 when the estimated
17 value is less than the mandatory bid amount shall be made in
18 accordance with the Rules and Regulations of Purchasing.

19 8. Design-Build Services

20 The procurement of Design-Build Services shall be made
21 in accordance with the following rules and procedures:

22 a. Design Criteria Package

23 The design criteria package as defined herein
24 shall be prepared and sealed by a design criteria professional
25 employed or retained by the County. If the County enters into a
26 professional services contract for the preparation of the design
27 criteria package, the professional shall be selected and
28 contracted with in accordance with the requirements of Section
29 287.055 (4) and (5), F.S. (1989). The professional preparing the
30 design criteria package shall not be eligible to render services
31 under a design-build contract executed pursuant to the package
32 prepared by such professional.

33 b. Design-Build Evaluation Committee

34 A design-build evaluation committee, hereinafter
35 Committee, is hereby established which shall be composed of:

36 (1) a representative of the user agency,

- (2) the County Engineer,
- (3) The Director of the Capital Improvements Division,
- (4) the Director of the Department of Facilities, Planning and Design,
- (5) the design-criteria professional,
- (6) the Director of the Office of Equal Opportunity.

c. Selection

(1) Notice - the County shall publicly advertise in a uniform and consistent manner on each occasion when design-build services are required except in cases of valid public emergencies. The advertisement shall include a general description of the project and shall indicate how, and the time within which, interested design-build firms may apply for consideration.

d. Qualification

Any firm or individual desiring to provide design-build services for the County must first be determined legally qualified. Legal qualifications are:

(1) Firms must be properly certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and

(2) Firms must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture.

(3) The firm shall be duly qualified to perform its proposed service under any other applicable law.

The Committee shall prepare and maintain a list of design-build firms qualified by training and experience. The County may establish a procedure whereby annual statements of qualifications and performance data shall be submitted by design-build firms to the County. Each design-build firm included on such list shall receive an announcement of individual projects.

e. Solicitation

1 Requests for Proposals (RFPs) shall be sent to
2 all interested firms requesting that their qualifications,
3 proposed design and price be submitted at a time and place
4 certain. The RFP shall contain at a minimum the design criteria
5 package; evaluation criteria based on price, technical and design
6 aspects of the project and the proportionate weighing of such
7 criteria; evaluation procedures and any other information
8 pertinent to selection and award of the design-build contract.

9 The Committee shall determine the evaluation
10 criteria and weighing of such criteria and evaluation process of
11 each project.

12 All proposed designs and price proposals shall be
13 submitted in a separate sealed envelope.

14 f. Evaluation

15 The Committee shall review all proposals and
16 identify no less than three (3) firms deemed qualified to perform
17 the required services based on firm qualifications, availability
18 and past work of the firm.

19 After short-listing, the Committee shall open the
20 envelopes containing the proposed design and the prices. The
21 Committee shall then rank the short-listed firms based on the
22 evaluation criteria set forth on the RFP. The Committee may
23 require oral presentations of short-listed firms.

24 g. Negotiation

25 After ranking, the Committee shall attempt to
26 negotiate a contract within the parameters of the design criteria
27 package. Design-build contracts will be awarded under the
28 provisions of Section III.F herein and other applicable provisions
29 of this ordinance.

30 h. Emergency

31 In the case of a public emergency as declared by
32 the Board, the Committee shall be authorized to negotiate with the
33 best qualified firm available at the time.

34 i. Additional Functions of Design Criteria
35 Professional

36 The design-criteria professional shall be

1 consulted in the evaluation process, the supervision or approval
2 of the County of the detailed working drawings of the project and
3 for the evaluation of the compliance of the project construction
4 with its design criteria package.

5 D. PROTESTED SOLICITATIONS AND AWARDS

6 1. Right to Protest - After posting, any actual or
7 prospective bidder who is aggrieved in connection with the pending
8 award or other element of the process leading to the award of a
9 contract may protest to the Director of Purchasing.

10 2. Notice - The protest shall be submitted within
11 five business days after posting of the tabulation of bids or, in
12 the case of Requests for Proposals or Information, after posting
13 of the award recommendation, at that location where bids or
14 responses are submitted. The protest must be in writing and must
15 identify the protester and the solicitation and shall include a
16 factual summary of the basis of the protest. Such protest is
17 considered filed when it is received by the Department of
18 Purchasing.

19 3. Authority to Resolve - A protest committee
20 comprised of the Director of Purchasing, a representative of the
21 County Attorney and an Assistant County Administrator or the
22 Deputy County Administrator, shall have the authority to review,
23 settle and resolve the protest. The Committee's review shall be
24 informal and not subject to certiorari review.

25 The Director of Purchasing shall serve as the Chair of
26 the Committee. The Director of the Office of Equal Opportunity
27 shall serve as an advisor to the Committee; provided, however,
28 where the protest involves a Minority or Women Business issue or
29 an allegation of discrimination, the Director of the Office of
30 Equal Opportunity shall serve as a fourth member of the Committee.

31 a. If it is determined that the solicitation or
32 award is in violation of law or the Rules and Regulations of
33 Purchasing, the solicitation or award shall be canceled or
34 revised.

35 b. If it is determined that the solicitation or
36 award should be upheld, the Director of Purchasing shall promptly

1 issue a decision in writing stating the reason for the action with
2 a copy furnished to the protestor and any other intervening party.

3 c. The determination shall be final and
4 conclusive as to the County unless a party commences action in
5 court.

6 4. Stay of Procurement During Protests -
7 Notwithstanding anything contained herein to the contrary, in the
8 event of a timely protest, the Director of Purchasing shall stay
9 the award of the contract unless the Director, with the advice of
10 the County Attorney and after consultation with the using
11 department, makes a determination that the award of the contract
12 without delay is necessary to protect substantial interests of the
13 County Government.

14 5. Reservation of Powers to Settle Actions Pending
15 before the Courts - Nothing in this Section is
16 intended to affect the existing powers of the Board to settle
17 actions pending before the Courts.

18 E. SUSPENSION AND DEBARMENT

19 1. Authority - The Director of Purchasing may
20 suspend or debar for cause the right of a vendor to be included on
21 a vendor list and any bid or response from that vendor rejected;
22 provided, however, the Board shall have the power to waive or lift
23 such suspension or debarment.

24 2. Suspension - A vendor may be suspended for a
25 period not to exceed two years as determined by the Director based
26 upon the following:

27 a. Failure to fully comply with the conditions,
28 specifications, or terms of a bid, proposal or contract with the
29 County;

30 b. Commission of any misrepresentation in
31 connection with a bid, quotation or proposal.

32 c. Charged by a court of competent jurisdiction
33 with the commission of a criminal offense as an incident to
34 obtaining or attempting to obtain a public or private contract or
35 subcontract, or in the performance of such contract or
36 subcontract.

1 d. Charged by a court of competent jurisdiction
2 with the following: embezzlement, theft, forgery, bribery,
3 falsification or destruction of records, receiving stolen
4 property, or any other offense indicating a lack of business
5 integrity or business honesty which currently, seriously, and
6 directly affects responsibility as a County Government contractor.

7 If charges are dismissed or the vendor found not
8 guilty, the suspension shall be lifted automatically upon written
9 notification and proof of final court disposition provided by the
10 vendor to County.

11 e. Vendor becomes insolvent, has proceedings in
12 bankruptcy instituted against it or, compounds its debts or
13 assigns over its estate or effects for payment thereof, or has a
14 receiver or trustee appointed over its property.

15 f. Commission of any act or omission to perform
16 any act which is grounds for debarment.

17 g. Any other cause the Director of Purchasing
18 determines to be so serious and compelling as to materially and
19 adversely affect responsibility of a business as a County
20 Government contractor, including but not limited to suspension by
21 another governmental entity for substantial cause.

22 h. Violation of the ethical standards set forth
23 in local, State, or Federal law.

24 3. Debarment - A vendor may be permanently debarred
25 for the following:

26 a. Repeated failure to fully comply with the
27 conditions, specifications, drawings, or terms of a bid, proposal
28 or contract with the County.

29 b. Conviction by or judgment obtained in a
30 court of competent jurisdiction for commission of those offenses
31 in connection with the vendor's commercial enterprise stated in
32 subsections 2.c and 2.d. If the conviction or judgment is
33 reversed through the appellate process, the debarment shall be
34 removed immediately upon written notification and proof of final
35 court disposition from the vendor to the County.

36 c. Conviction for the commission of any fraud

1 or act of collusion in connection with any sale, bid, quotation,
2 proposal, or other act incident to doing business with the County.

3 4. Decision - After the Director of Purchasing has
4 determined he/she has cause to suspend or debar a vendor, he/she
5 shall notify the vendor in writing of the debarment or the period
6 of suspension and the reasons for the action taken.

7 5. Finality of Decision - The suspension or
8 debarment shall be final and conclusive unless the suspended or
9 debarred vendor initiates protest proceedings. Protests will be
10 initiated under the procedures provided in Section IV.D except
11 that the allowable time for protesting the suspension or debarment
12 will be 21 calendar days after the date of notification provided
13 in Section IV.E.4. herein.

14 F. INSPECTIONS AND TESTS

15 1. The using department of the County shall inspect,
16 or arrange for the inspection of, all deliveries of supplies,
17 materials, equipment or contractual services to determine
18 conformance with specifications set forth in the order of
19 contract.

20 2. The Director of Purchasing shall have the
21 authority to require chemical and/or physical tests or samples
22 submitted with bids and samples of deliveries which are necessary
23 to determine their quality and conformance with the
24 specifications. For such tests, the Director of Purchasing has
25 the authority to make use of laboratory facilities of an agency of
26 the County government or any outside laboratory. In the event,
27 the product fails such testing, the County may require the Vendor
28 to pay the County for any expense incurred in testing.

29 V. EQUAL OPPORTUNITY FOR MINORITY/WOMEN BUSINESS ENTERPRISES
30 (M/WBE)

31 The County shall use its best efforts to ensure that
32 minority and women businesses shall have an equitable opportunity
33 to participate in the County's procurement process and that no
34 business shall be excluded from participation in, denied benefits
35 of, or otherwise discriminated against in connection with the
36 award and performance of any contracts with the County.

1 This Ordinance shall be read consistently with the County's
2 Minority/Women Business Enterprise Ordinance.

3 VI. CONFLICT OF INTEREST

4 Neither the Director of Purchasing nor any member of
5 his/her staff, shall be financially interested or have any
6 personal beneficial interest, directly or indirectly, in any
7 purchase or contract of any supplies, materials, equipment, or
8 services used by or furnished for the County.

9 The Director of Purchasing and every member of his/her
10 staff are prohibited from accepting or receiving from any person,
11 firm or corporation to which any purchase or contract may be
12 awarded any money, rebate, gift or anything of value or any
13 promise, obligation or contract for future reward of compensation.

14 VII. REPEAL OF LAWS IN CONFLICT

15 All local ordinances applying to the unincorporated area of
16 Palm Beach County or parts of such Ordinances in conflict with any
17 provisions of this Ordinance are hereby repealed to the extent of
18 the conflict; provided, however, this Ordinance shall not repeal
19 the County's Minority/Women Business Enterprise Ordinance.

20 VIII. SEVERABILITY

21 If any section, paragraph, sentence, clause, phrase, or
22 word of this Ordinance is for any reason held by the Court to be
23 unconstitutional, inoperative or void, such holding shall not
24 affect the remainder of this Ordinance.

25 IX. INCLUSION IN THE CODE OF LAWS

26 The provisions of this Ordinance shall become and be made
27 a part of the code of laws and codes of Palm Beach County,
28 Florida. The Sections of the Ordinance may be renumbered or
29 relettered to accomplish such, and the word "code" may be changed
30 to "section," "article," or any other appropriate word.

31 X. EFFECTIVE DATE

32 The provisions of this Ordinance shall become effective
33 upon receipt of acknowledgement by the Secretary of State.

34 APPROVED AND ADOPTED by the Board of County Commissioners
35 of Palm Beach County, Florida, on the 19th day of October, 1993.

DOROTHY H. WILKEN, CLERK
Board of County Commissioners

By

Sharon Kellies

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

DEPUTY CLERK PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

S. D. Alcott

County Attorney



Ken Hester

Chairperson

Acknowledgement by the Department of State of the State of
Florida, on this, the 27th day of October, 1993.

EFFECTIVE DATE: Acknowledgement from the Department of
State received on the 2nd day of November, 1993, at
10:17 A..M., and filed in the Office of the Clerk of the
Board of County Commissioners of Palm Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office

on 10/19/93

DATED at West Palm Beach, FL. on 11/3/93

DOROTHY H. WILKEN, Clerk

By: *Dee Ling* D.C.

Deputy Clerk

